

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th May, 2012

+ **MAC.APP. 364/2012**

SIHESHWAR MAHTO & ORS. Appellants
Through: Mr. F.K. Jha, Advocate

versus

SILAKANT JHA & ORSs Respondents
Through: Ms. Manjusha Wadhwa, Adv.
for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹7,82,000/- awarded for the death of Smt. Sheela Devi, who died in a motor accident which occurred on 10.03.2010.
2. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) it was claimed that the deceased was a self employed person and was earning ₹10,000/- per month.
3. In the absence of any proof of deceased's income, the Claims Tribunal took the notional income of the deceased as ₹3,000/-, adopted the multiplier of '17' as per the deceased's age (28 years) and computed the loss of dependency as ₹6,12,000/-.
4. It is submitted by the learned counsel for the Appellants that the

Appellants were entitled to loss of dependency in case of a housewife on the basis of a salary of a non-Matriculate.

5. On the other hand, Ms. Manjusha Wadhwa, learned counsel for the Respondent Insurance Company urges that the deceased was claimed to be aged 34 years in the Claim Petition. Even as per the Ration Card, her age was 34 years. In the circumstances, the deceased's age should have been taken as 34 years instead of 28 years (as per the postmortem examination report). It is stated that the compensation of ₹1,00,000/- awarded towards loss of love and affection is on the higher side.
6. This case is covered by the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30th January, 2012. This Court noticed the following judgments of the Supreme Court:-
 - (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,
 - (ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,
 - (iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,
 - (iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8

SCC 197,

(v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,

(vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,

(vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and

(viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh* (*supra*) is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.
- (ii) Minimum salary of a Matriculate where she is a Matriculate.
- (iii) Minimum salary of a non-Matriculate in other cases.
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any

addition in the assumed salary where the age is more than 50 years.

- (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) There shall not be any deduction towards the personal and living expenses.*
- (viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*
- (ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."*

7. It is urged by the learned counsel for the Appellants that there is no evidence as to the deceased's educational qualification. Thus, value of the services rendered by her has to be taken as

the salary of a non-Matriculate as per the Minimum Wages Act.

8. Minimum wages of a non-Matriculate on the date of the accident i.e. 10.03.2010 were ₹ 5850/-. Hence, applying the above ratio, the loss of dependency comes to ₹ 14,04,000/- (5850/- + 25% x 12 x 16).
9. The Claims Tribunal awarded a sum of ₹1,00,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh (2011) 11 SCC 425* and in *Baby Radhika Gupta v. Oriental Insurance Company Limited (2009) 17 SCC 627* granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head from ₹ 1,00,000/- to ₹ 25,000/- only.
10. The Appellants were entitled to a sum of ₹10,000/- each towards loss of consortium and funeral expenses. The overall compensation thus comes to ₹ 14,49,000/- (14,04,000/- + 45,000/-) (including the interim compensation, if any).
11. The compensation is thus enhanced from ₹7,82,000/- to ₹14,49,000/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date of deposit.
12. Respondent No.3 Insurance Company is directed to deposit the

enhanced amount along with interest within six weeks in fixed deposit in the name of Appellants with UCO Bank, Delhi High Court, New Delhi.

13. The enhanced compensation along with interest shall be equally apportioned in favour of Appellants No.1 to 3. The amount payable to Appellants No.2 and 3 shall be held in fixed deposit for a period till they attain the age of 21 years.
14. 50% of the compensation payable to the First Appellant shall be held in fixed deposit for a period of three years. Rest of the amount shall be released to him immediately on deposit.
15. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 30, 2012
vk